

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

GERALD YALE DAVID

§

VS.

§ CIVIL ACTION NO. 1:04cv5

TED WEST, ET AL.

§

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Gerald Yale David, an inmate confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this civil rights action pursuant to 42 U.S.C. § 1983 against Ted West, Charles Keaton, Wesley Freeman, David Doughty, Clarence Mosley, Richard Appleman, Dan Lewis, Michael Simmons, Medford Maider, Jessie Pesina, Miguel Morales, Stacey Stanley, James Mitchell, Willie Joe McAdams, Clint Gilbert, David Bergeron, Billye Forrest, Larry Sonnier, Brian Sewell, Tommy Brown, Tracey Allen, Felix Gordon, Curtis Hinson, Shereda Polk, and Aaron Root.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the case pursuant to Federal Rule of Civil Procedure 4(m) for failing to serve the defendants.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends that he properly served defendants Billye Forrest and Willie Joe McAdams, and that he has shown good cause for failing to serve the remaining defendants. The return of service shows that defendant Forrest was served in person by a correctional officer. It appears that defendant Forrest was properly served, therefore, plaintiff's objections will be sustained as to defendant Forrest. With respect to defendant McAdams, the return of service shows that service was defective because plaintiff served the defendant himself. *See* FED. R. CIV. P. 4(e)(1); TEX. R. CIV. P. 103, 106. Plaintiff has not shown good cause for failing to serve defendant McAdams and the remaining defendants. After due consideration, the court concludes the objections are without merit, except with respect to the dismissal of defendant Billye Forrest.

ORDER

Accordingly, the report of the magistrate judge is partially **ADOPTED** to the extent it recommends dismissing Ted West, Charles Keaton, Wesley Freeman, David Doughty, Clarence Mosley, Richard Appleman, Dan Lewis, Michael Simmons, Medford Maider, Jessie Pesina, Miguel Morales, Stacey Stanley, James Mitchell, Willie Joe McAdams, Clint Gilbert, David Bergeron, Larry Sonnier, Brian Sewell, Tommy Brown, Tracey Allen, Felix Gordon, Curtis Hinson, Shereda Polk, and Aaron Root. A partial judgment will be entered dismissing those defendants from this case in accordance with this Memorandum Order.

So **ORDERED** and **SIGNED** this 8 day of **August, 2005**.



Ron Clark, United States District Judge